

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION**

**NURIAN MENDEZ REYES, IND.,  
AND JOSE ISAGUIRRE RAMOS AS  
NATURAL TUTOR OF THIAGO  
ISAGUIREE MENDEZ**

**CIVIL ACTION NO.**

**JUDGE**

**MAGISTRATE**

**VERSUS**

**THE TRAVELERS INDEMNITY  
COMPANY, K&M TIRE, INC. AND  
MIGUEL A. LOPEZ**

**NOTICE OF REMOVAL**

**NOW INTO COURT**, through undersigned counsel, come THE TRAVELERS INDEMNITY COMPANY, K&M TIRE, INC. and MIGUEL A. LOPEZ, who pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1446, file this Notice of Removal of this cause to the United States District Court for the Western District of Louisiana, Lake Charles Division, from the 14th Judicial District Court for the Parish of Calcasieu, State of Louisiana, and in support of said Notice offer the following:

1. Plaintiffs filed their Petition for Damages in the 14<sup>th</sup> Judicial District Court for the Parish of Calcasieu, State of Louisiana, on July 7, 2021, bearing Docket No. 2021-2637, Div. "H". The petition alleges injuries as a result of a December 1, 2020 motor vehicle accident on an Interstate 210 off ramp in Calcasieu Parish.<sup>1</sup>

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<sup>1</sup> See Petition for Damages, marked and attached as Exhibit 1.

2. Plaintiffs name as defendants: (1) THE TRAVELERS INDEMNITY COMPANY (hereinafter “TRAVELERS”); (2) K&M TIRE, INC. (hereinafter “K&M”); and (3) MIGUEL A. LOPEZ (hereinafter “LOPEZ”).<sup>2</sup>

Plaintiffs have alleged that all defendants are citizens of states other than Louisiana. THE TRAVELERS INDEMNITY COMPANY is a foreign insurance company, formed under the laws of the State of Connecticut, with its principal place of business in Hartford, Connecticut. K&M TIRE, INC. is a foreign corporation, formed under the laws of the State of Ohio, with its principal place of business in Delphos, Ohio, in the County of Allen. LOPEZ is a resident of and domiciled in Houston, Texas. Consequently, diversity of citizenship as defined by 28 U.S.C. §§ 1332(a) exists.

3. According to the petition, plaintiff’s vehicle was struck from the rear by a vehicle driven by LOPEZ and as a result thereof, Plaintiffs suffered “severe injuries and damages” including “emotionally, mentally, and physically”.<sup>3</sup>

4. Pursuant to Louisiana Code of Civil Procedure article 893, plaintiffs are required to specifically state whether the claim exceeds or fails to meet the jurisdictional limit for federal court and for trial by jury. Plaintiffs failed to so allege.

5. On August 27, 2021, TRAVELERS filed an Exception of Vagueness and Ambiguity, and Nonconformity of Petition noting the deficiency in plaintiffs’ pleadings, and requesting that plaintiffs cure the defect by indicating whether or not their damages exceed or are less than the threshold amount for removal to federal court based on diversity of citizenship.<sup>4</sup>

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<sup>2</sup> See Exhibit 1, paragraph 1.

<sup>3</sup> See Exhibit 1, paragraphs 10, 17, and 18.

<sup>4</sup> See Exception of Vagueness and Ambiguity, and Nonconformity of Petition, marked and attached as Exhibit 2.

6. Prior to hearing on the exception, Plaintiffs filed their First Supplemental and Amending Petition for Damages, wherein Plaintiffs added an additional paragraph number 19, which alleged: "It is anticipated that the amount in controversy for each Plaintiff will exceed the amount of seventy-five thousand (\$75,000.00), exclusive of interests and costs."<sup>5</sup> Considering the foregoing, defendants submit that diversity jurisdiction exists and this Honorable Court has original jurisdiction over this matter.

7. While 28 U.S.C. §§ 1441(a) provides in part that any civil action brought in a state court of which the district courts of the United States have original jurisdiction may be removed by the defendants, 28 U.S.C. §§ 1441(b) provides for removal of cases based on diversity of citizenship under 28 U.S.C. §§ 1332(a).

8. Whether or not the case was removable was not ascertainable on the face of the pleadings. In response to the filing of defendant's exception to address this issue, on September 27, 2021, Plaintiffs filed their First Supplemental and Amending Petition for Damages, copying defendants with said pleadings. This was the first notice that each Plaintiff alleged that their damages exceed \$75,000.00, exclusive of interest and costs.<sup>6</sup> Hence, defendants' removal notice is filed in compliance with 28 U.S.C. § 1446(b)(3).<sup>7</sup>

9. Notice of this removal has been made to all adverse parties and to the 14<sup>th</sup> Judicial District Court for the Parish of Calcasieu by the filing of a notice pursuant to 28 U.S.C. § 1446(d).

10. All defendants consent to the removal of this matter.

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<sup>5</sup> See First Supplemental and Amending Petition for Damages filed on or about September 27, 2021, marked and attached as Exhibit 3.

<sup>6</sup> See Exhibit 3.

<sup>7</sup> Travelers was served on August 16, 2021. Plaintiff requested Long-Arm service on K&M and Lopez on August 9, 2021. There is no evidence in the record of service returns. Exceptions of Vagueness and Ambiguity, and Nonconformity of Petition was filed on August 27, 2021. Prior to hearing on the Exceptions, on September 27, 2021, Plaintiffs filed their First Amended Petition alleging damages in excess of the diversity removal threshold.

11. Pursuant to 28 U.S.C. § 1446(a), attached are the only pleadings filed of record: (1) original Petition for Damages;<sup>8</sup> (2) Exception of Vagueness and Ambiguity, and Nonconformity of Petition filed on behalf of TRAVELERS;<sup>9</sup> and (3) Plaintiffs' Motion for Leave to File First Supplemental and Amending Petition and proposed First Supplemental and Amending Petition.<sup>10</sup>

WHEREFORE, Defendants, THE TRAVELERS INDEMNITY COMPANY, K&M TIRE, INC. and MIGUEL A. LOPEZ, file their Notice of Removal removing this cause of action from the 14th Judicial District Court for the Parish of Calcasieu to the United States District Court for the Western District of Louisiana, Lake Charles Division.

Respectfully submitted,

/s/ Matthew A. Ehrlicher  
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*Attorney for Defendants, The Travelers  
Indemnity Company, K&M Tire, Inc.  
and Miguel A. Lopez*

#### **CERTIFICATE OF SERVICE**

I do hereby certify that on this 18th day of October, 2021, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Justin T. Morales (Counsel for Plaintiffs, Nurian Mendes Reyes, Ind., and Jose Isaguirre Famos as Natural Tutor of Thiago Isaguirre Mendez)

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<sup>8</sup> See Exhibit 1.

<sup>9</sup> See Exhibit 2.

<sup>10</sup> See Exhibit 3.

I also certify that I have forwarded *via* email this filing to the following:

Justin T. Morales at [justin.morales@townsleylawfirm.com](mailto:justin.morales@townsleylawfirm.com), (Counsel for Plaintiffs, Nurian Mendes Reyes, Ind., and Jose Isaguirre Famos as Natural Tutor of Thiago Isaguirre Mendez)

/s/ Matthew A. Ehrlicher  
**MATTHEW A. EHRLICHER**